

ESTTA Tracking number: **ESTTA585091**

Filing date: **01/31/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058417
Party	Plaintiff Lithera, Inc.
Correspondence Address	JEFFREY L VAN HOOSEAR KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET , 14TH FLOOR IRVINE, CA 92614 UNITED STATES efiling@knobbe.com
Submission	Opposition/Response to Motion
Filer's Name	Jeffrey L. Van Hoosear
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Signature	/JVH/
Date	01/31/2014
Attachments	LITHE.023N Petitioner's Opposition to Motion to Suspend.pdf(81852 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Lithera, Inc.,

Petitioner,

v.

Kythera Biopharmaceuticals, Inc.,

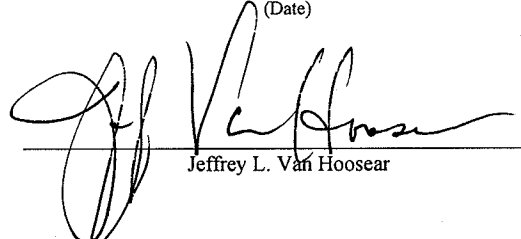
Respondent.

) Cancellation No: 92058417

) I hereby certify that this correspondence and all marked attachments,  
) are being electronically filed with the Trademark Trial and Appeal  
) Board through their web site located at <http://esta.uspto.gov> on:

January 31, 2014

(Date)



Jeffrey L. Van Hoosear

**PETITIONER'S OPPOSITION TO MOTION TO SUSPEND**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir or Madam:

Petitioner opposes the Motion to Suspend. The Registrant has already provided the Board with a copy of the operative pleadings from the civil action that demonstrate the Petition to Suspend should be denied for at least three independent reasons.

First, Petitioner has moved for dismissal of the civil action on a number of grounds, including that the Petitioner and the Registrant are both clinical stage pharmaceutical companies between whom there can be no likelihood of confusion, and Registrant's civil complaint is premature. Petitioner's motion to dismiss the civil action is fully briefed and the parties are awaiting the district court's ruling on the motion to dismiss. If the court grants the Motion to Dismiss, there will be no pending civil action to support suspension.

Second, the action before the Board is to cancel Reg. No. 4,012,388. The complaint in

the civil action does not seek cancellation of Reg. No. 4,012,388. The Board should not suspend this proceeding unless and until it is clear that the civil action will proceed and a party pleads a claim that would have a bearing on the issues before the Board in this proceeding.

Third, as a practical matter, there is no reason to suspend these proceedings before the district court rules on the motion to dismiss because Registrant filed an Answer on January 29, 2014.

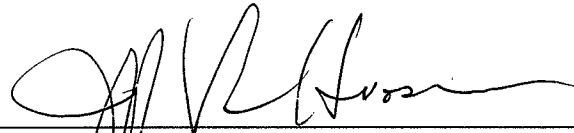
WHEREFORE, Petitioner prays that the Motion to Suspend be denied. Alternatively, Petitioner prays that a ruling on the Motion to Suspend be deferred until the court rules on the pending motion to dismiss the civil action.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 31, 2014

By: \_\_\_\_\_



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Attorneys for Petitioner,  
Lithera, Inc,

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing **PETITIONER'S OPPOSITION TO MOTION TO SUSPEND** upon Registrant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid on January 31, 2014 addressed as follows:

John J. Dabney  
McDermott Will & Emery LLP  
500 North Capitol Street, N.W.  
Washington, DISTRICT OF COLUMBIA 20001

  
Betty de la Torre

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